

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 SYLVIA SANTOS,

12 Plaintiff,

13 vs.

14 GUARD MANAGEMENT, INC., et al.,

15 Defendants.

CASE NO. 10CV2563 DMS (POR)

**ORDER GRANTING MOTION TO
DISMISS BY DEFENDANT
INSURANCE COMPANY OF THE
WEST**

16 Pending before the Court is Defendant Insurance Company of the West's ("ICW") motion to
17 dismiss Plaintiff's Second Amended Complaint ("SAC"). (Doc. 26.) For the following reasons,
18 Defendant's motion is granted.

19 Plaintiff, a non-prisoner proceeding *pro se*, filed a Complaint and motion for leave to proceed
20 *in forma pauperis* ("IFP") on December 15, 2010. (Docs. 1-2.) On December 22, 2010, this Court
21 issued an Order granting Plaintiff's motion for leave to proceed IFP and *sua sponte* dismissing without
22 prejudice Plaintiff's claims for violation of Title VII, libel, slander, conspiracy, and violation of the
23 Americans with Disabilities Act ("ADA") based upon the April 2009 incident for failure to state a
24 claim. (Doc. 3.) Plaintiff's claim for violation of the ADA based upon the May 2009 incident
25 survived. On January 12, 2011, Plaintiff filed a First Amended Complaint ("FAC"). (Doc. 4.) On
26 February 3, 2011, the Court issued an Order finding the claims in the FAC against Defendant Guard
27 Management, Inc. sufficient to survive the screening provisions of 28 U.S.C. § 1915(e)(2). (Feb. 3
28 Order at 2.) The Court noted that, although ICW was listed as a Defendant in the caption of the FAC,

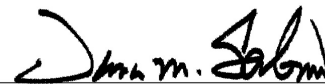
1 it was not listed as a Defendant in the FAC itself and Plaintiff made no allegations as to it. (*Id.* at 2
 2 n.1.) On March 15, 2011, Defendant ICW filed a motion to dismiss the FAC. (Doc. 9.) The Court
 3 granted the motion on May 3, 2011, and granted Plaintiff leave to file a SAC by May 27, 2011, which
 4 she did. (Docs. 18, 24.)

5 In the SAC, Plaintiff alleges defendant Guard Management, Inc. discriminated against her on
 6 the basis of race and disability. Plaintiff also states a claim for racial discrimination against ICW.
 7 (SAC at ¶¶ 1, 32-35; Opp. at 2-3.) In support of this claim, Plaintiff alleges ICW made “inaccurate,
 8 intentional, malicious, and fraudulent statements to the WCAB; to the Fair Employment & Housing;
 9 to the District Attorneys’ Office, and all was done in retaliation due to Discrimination of my Race,
 10 being of Mexican descent, . . . and that because I am a Hispanic, a female and I sustained injuries
 11 leaving me with a Disability” (*Id.* at ¶ 35.) However, Plaintiff fails to make any additional
 12 factual allegations in support of her claim that ICW’s alleged statements were in any way motivated
 13 by Plaintiff’s race, sex, or disability status. Accordingly, Plaintiff has failed to allege sufficient factual
 14 detail to state a plausible claim for discrimination against ICW.

15 Plaintiff has been granted multiple opportunities to properly plead a claim for relief against
 16 ICW and has failed to do so. Accordingly, Defendant ICW’s motion to dismiss is granted with
 17 prejudice.

18 **IT IS SO ORDERED.**

19 DATED: July 28, 2011



20
 21 HON. DANA M. SABRAW
 22 United States District Judge
 23
 24
 25
 26
 27
 28